86-318

Supreme Court, U.S.
FILED
JUL 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

No. _____

CLARENCE B. BAILEY, Petitioner

v.

FEDERAL INTERMEDIATE
CREDIT BANK OF ST. LOUIS, Respondent

---

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

---

Thomas E. Hankins
Gunn, Hall & Stahl, P.C.
6812 North Oak Trafficway, Suite 5
Gladstone, Missouri 64118-2587
Telephone: (816) 436-3100

Bruce A. Bailey
222 Maynard
Warrensburg, Missouri 64093
Telephone: (816) 747-6600

Counsel for Petitioner

Service Copy To:
James M. Byrne
714 Locust Street
St. Louis, Missouri 63101
Counsel for Respondent

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

No. _____

CLARENCE B. BAILEY, Petitioner

v.

FEDERAL INTERMEDIATE
CREDIT BANK OF ST. LOUIS, Respondent

---

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

---

Clarence B. Bailey petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

## QUESTIONS PRESENTED

1. Whether a Congressional grant of general supervisory power to one federal instrumentality over another confers upon the supervising instrumentality the power to terminate employees of the supervised instrumentality.

2. Whether a federal intermediate credit bank (a federally chartered instrumentality of the United States functioning within the Federal Farm Credit System) has the authority under statutory provisions to terminate the employment of a chief executive officer of a production credit association (also a federally chartered instrumentality of the United States functioning within the Federal Farm Credit System).

3. Whether the bylaws promulgated by the Federal Farm Credit System which purport to give federal intermediate credit banks the power to terminate the employment of a chief executive officer of a production credit association, grant to federal intermediate credit banks powers in excess of

those vested in those institutions by the legislation that created them.

4. Whether the Farm Credit Act of 1971, 12 U.S.C. §§2001-2260, in giving federal intermediate credit banks the power of "general supervision" over production credit associations, confers upon federal intermediate credit banks the power to overrule a unanimous decision by the production credit association board of directors to retain their chief executive officer and to overrule basic policy decisions made by a production credit association's board of directors affecting local management and control.

## PARTIES

A list of all parties to the proceeding in the court whose judgment is sought to be reviewed is contained in the caption hereof.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED ..... | ii |
| PARTIES ..... | iii |
| TABLE OF AUTHORITIES ..... | v |
| OPINION BELOW ..... | 1 |
| JURISDICTION ..... | 1 |
| STATUTES AND REGULATIONS INVOLVED ... | 1 |
| STATEMENT OF THE CASE ..... | 6 |
| REASONS FOR GRANTING THE WRIT ..... | 8 |
| CONCLUSION ..... | 18 |

## TABLE OF AUTHORITIES

**CASES:**

Jones v. H.D. & J.K. Croswell, 60___ F.2d 827 (4th Cir. 1932)

Daley v. Farm Credit Administration, 454 F.Supp. 953 (D. Minn. 1978)

**STATUTES:**

12 U.S.C. §248

12 U.S.C. §1432

12 U.S.C. §1819

12 U.S.C. §2001

12 U.S.C. §2072

12 U.S.C. §2244

Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, 1985 U.S. Code Cong. & Ad. News (99 Stat.) 1678

22 U.S.C. §2193

28 U.S.C. §1254

**SECONDARY AUTHORITY**

1971 U.S. Code Cong. & Ad. News 2102

## OPINION BELOW

The opinion of the Court of Appeals was entered on April 9, 1986 and is reported at ___ F.2d ____. The opinion is attached as Appendix A to this petition. The Opinion of the District Court is reprinted at 608 F. Supp. 1009 (W.D. Mo. 1985). It is attached as Appendix B to this petition. A copy of the Court of Appeals' May 30, 1986 Order denying the Motion for Rehearing and Motion for Rehearing en banc is attached as Appendix C to this Petition.

## JURISDICTION

The judgment of the Court of Appeals was entered on April 9, 1986. The Petition for Rehearing and Petition for Rehearing en banc were denied on May 30, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## STATUTES AND REGULATIONS INVOLVED

12 U.S.C. §248

> The Federal Reserve Board shall be authorized and empowered:
>
> * * *
>
> (f) To suspend or remove any officer or director of any Federal reserve bank, the cause of

such removal to be forthwith communicated in writing by the Federal Reserve Board to the removed officer or director and to said bank.

* * *

(j) To exercise general supervision over said Federal reserve banks.

12 U.S.C. §1432

(a) The directors of each Federal Home Loan Bank [may] . . . dismiss at pleasure such officers, employees, attorneys, and agents . . .

12 U.S.C. §1819

To appoint by its Board of Directors such officers and employees . . . and to dismiss at pleasure such officers or employees . . .

12 U.S.C. §2001

(a) It is declared to be the policy of Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this Act to continue to encourage farmerand rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural procedures having a basis for credit, and to modernize the improve the authorizations and means for furnishing such credit and credit for housing

in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

12 U.S.C. §2072

Each Federal intermediate credit bank shall be a body corporate and, subject to supervision of the Farm Credit Administration, shall have power to(1)Adopt and use a corporate seal.
(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.
(3) Make contracts.
(4) Sue and be sued.
(5) Acquire, hold, dispose, and otherwise exercise all of the incidents of ownership of real and personal property necessary or convenient to its business.
(6) Make and discount loans and commitments for credit, and provide services and other assistance as authorized in this Act, and charge fees therefor.
(7) Operate under the direction of its board of directors.
(8) Elect by its board of directors a president, any vice president, a secretary, and a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act; define their duties and require surety bonds or make other provisions against losses occasioned by employees.
(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents elected or provided for; its property acquired, held, and transferred; its loans and discounts made; its general business conducted; and the provileges granted it by law exercised and enjoyed.
(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11) Purchase nonvoting stock in or pay in surplus to, and accept deposits of securities or of current funds from production credit associations holding its shares and pay interest upon such funds.
(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.
(13) Buy and sell obligations of or insured by the United States or any agency thereof, or securities backed by the full faith and credit of any such agency, and, as may be authorized by its board of directors and approved by the Farm Credit Administration, (i) buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock, and (ii) make other investments.
(14) Delegate to the production credit associations such functions vested in or delegated to the intermediate credit bank as it may determine.
(15) Approve the salary scale of the officers and employees of the association and the appointment and compensation of the chief executive officer thereof and supervise the exercise by the production credit associations of the functions vested in or delegated to them.
(16) Amend and modify loan contracts, documents, payment schedules, and release, subordinate, or substitute security for any of them.

(17) Conduct studies and make and adopt standards for lending.
(18) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purposes,[.]
(19) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.
(20) Participate with one or more other Federal intermediate credit banks or production credit associations in the district, in loans under this title on such terms as may be agreed upon among such banks and associations, and participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act [12 USCS § 2206].
(21) Perform any function delegated to it by the Farm Credit Administration.

12 U.S.C. §2244

The Governor of the Farm Credit Administration shall be appointed by and serve at the pleasure of the Federal Farm Credit Board. He shall be responsible, subject to the general supervision and direction of the Board as to matters of a board and general supervisory, advisory, or policy nature, for the execution of all of the administrative functions and duties of the Farm Credit Administration. Pursuant to a policy statement adopted by the Federal Farm Credit Board, the Governor of the Farm Credit Administration shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System and the Governor of the powers conferred under section 4.2 of this Act [12 USCS § 2153], and with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy. During any period in which the Governor holds any stock

in any of the institutions subject to supervision of the Farm Credit Administration, the appointment of the Governor shall be subject to approval by the President and during any such period the President shall have the power to remove the Governor.

22 U.S.C. §2193

(b) . . . The other directors shall be officials of the Government . . . serving at the pleasure of the President of the United States.

* * *

(d) The Executive Vice President . . . shall serve at the pleasure of the President . . . . Of such persons employed by the Corporation, not to exceed twenty may be appointed, compensated or removed . . .

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;. . .

## STATEMENT OF THE CASE

Clarence B. Bailey (hereinafter Bailey), formerly chief executive officer of the Osage Production Credit Association (hereinafter OPCA) seeks a declaratory judgment that the Federal Intermediate Credit Bank of St. Louis (hereinafter the Bank) exceeded its lawful authority when, in March, 1984, it removed him from

that position. The District Court, on cross-motions for summary judgment, ruled in favor of the Bank and the Eighth Circuit affirmed.

The Federal Farm Credit System consists of twelve districts, each headed by a board of directors and each including, inter alia, one federal intermediate credit bank. The OPCA and the Federal Intermediate Credit Bank of St. Louis are both federally chartered instrumentalities and the OPCA is subject to the general supervision of the Bank.

Bailey became employed by the OPCA in 1963. In 1965 the OPCA board of directors employed Bailey as its chief executive officer. Bailey remained in that position until his termination on March 14, 1984. At the time of his termination, Bailey was the employee of the OPCA and not the employee of the Bank. Immediately before the Bank terminated Bailey's employment with the OPCA, the Bank requested that the board of directors of the OPCA terminate Bailey's employment. By a unanimous vote, the board refused.

After the Bank terminated his employment with the OPCA, Bailey filed a five-count complaint with the District Court. Count I raised a federal question centering on the power of federal intermediate credit

banks to terminate employees of PCA's. The district court's jurisdiction was based on 28 U.S.C. §1331. The remaining counts alleged state law claims. As to Count I, a stipulation of facts was entered into (see Appendix D) and cross-motions for summary judgment were filed. After granting the Bank's motion for summary judgment, the District Court dismissed, without prejudice, Bailey's pendent state claims for lack of jurisdiction.

## REASONS FOR GRANTING THE WRIT

This case involves an unprecedented attempt by the Farm Credit Administration to circumvent the clearly expressed Congressional intent that the Farm Credit System have a decentralized power base. See 12 U.S.C. §2001. As stated in Daley v. Farm Credit Administration, 454 F. Supp. 953, (D. Minn. 1978), at 954, "The objective of the Farm Credit System is to satisfy the peculiar credit needs of American farmers and ranchers while encouraging those farmers and ranchers to participate through management, control, and ownership of the system." The Daley court also noted that "To achieve this objective,

Congress devised a largely decentralized administrative structure . . . ."

Apparently, the Farm Credit Administration became dissatisfied with the decentralized administrative structure that Congress had put in place. Specifically, the Farm Credit Administration wanted to empower its Federal Intermediate Credit Banks to terminate the presidents of Production Credit Associations. As stated by Donald Wilkinson, Governor of the Farm Credit Administration, in his interview published in Farmland News, February 28, 1985 (see Appendix C):

> "But what we're asking for is cease and desist authority and removal authority. We now have no authority to remove a president or board member." [emphasis added]

It is obvious that the Farm Credit Administration was dissatisfied that Congress did not give it and its Federal Intermediate Credit Banks as much power over Production Credit Associations as it desired. It is also obvious that the Farm Credit Administration wanted Congress to change the law. Apparently, however, the Farm Credit Administration was too impatient to wait for Congress to change the law and

simply mandated the promulgation of a by-law empowering Federal Intermediate Credit Banks to terminate Presidents of Production Credit Associations. This by-law was drafted by the Farm Credit Administration and it was mandated that PCA's adopt this by-law.

While the OPCA has the statutory power to elect its chief executive officer and to compensate that chief executive officer and while Congress never gave the federal intermediate credit banks the power to terminate, fire, or remove chief executive officers of PCA's, both the District Court and the Court of Appeals found that federal intermediate credit banks did have the power to terminate chief executive officers of PCA's. Such a finding encourages federal instrumentalities which desire to accumulate and acquire additional powers to simply bootstrap themselves into acquiring such powers instead of returning to Congress for the necessary legislative authority.

Perhaps no better support for Bailey's position can be found than in the legislative action that took place after his termination. The Farm Credit Act was amended by Congress after oral argument in the

Court of Appeals. Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, 1985 U.S. Code Cong. & Ad. News (99 Stat.) 1678. The changes effectuated by these Amendments include giving the Farm Credit Administration the power to remove Production Credit Association Presidents. The significance of this Congressional action is two-fold. First, it demonstrates that the Farm Credit Administration did not previously have the power to mandate the promulgation of a by-law that gave Federal Intermediate Credit Banks the power to terminate Presidents of Production Credit Associations. The reason is obvious: Had the Farm Credit Administration had this power, it would likewise have had the power to mandate the promulgatio of a by-law that would give itself the power to terminate Presidents of Production Credit Associations. Had the Farm Credit Administration had this power, there would have been no need for Congress to amend the statute to confer this power upon the Farm Credit Administration. Second, and as discussed more fully below, it illustrates that Congress knows how to confer removal authority when it so desires.

The decisions of the Courts below not only serve to encourage federal instrumentalities to acquire and accumulate additional powers by promulgating in-house regulations and by-laws, but they also:

(a) muddle the distinction, long held, between the power of one entity to generally supervise another entity and the power of one entity to remove an employee of another entity;

(b) have the effect of centralizing and consolidating the power of federal instrumentalities in Washington, D.C. where the express congressional intent was to have a decentralized administrative scheme; and

(c) are contrary to commonly accepted statutory construction.

At 12 U.S.C. §2001, Congress declared that it is "the objective of this Act to continue to encourage farmer and rancher-borrowers' participation in the management, control, and ownership" of the farm credit system. While Congress specifically set forth twenty-one subparts to the banks' corporate power statute, 12 U.S.C. §2072, nowhere in those subparts is provision made for the bank to have the power to remove the officers

or employees of PCA's. For a federal court to imply removal authority where no such removal authority is specifically granted by Congress, where Congress has expressed its intention to have a decentralized power structure, and where the discharged chief executive officer is an employee of a federal instrumentality separate and apart from the instrumentality who issues the order of termination, is to greatly intrude upon and do violence with the administrative scheme established by statute.

Further, the opinions of the courts below seem to equate general supervisory authority with the authority of a supervising instrumentality to terminate the employees of the supervised instrumentality. The ordinary significance of the term "general supervision" as used in the Farm Credit Act would be for the bank to provide guidance and direction to overall credit policy to the OPCA board of directors and management. One of the generally understood principles of employment law is that the employer hires the employee and has the right to fire the employee. Congress created two distinct and separate federally chartered corporations when it created federal intermediate credit banks and

production credit associations. Given the well-understood principles of employment law, it seems logical that had Congress intended federal intermediate credit banks to have the power to terminate the employees of these independent PCA's, it would have so stated. The following chart clearly illustrates Congressional ability to say what it means when it intends to provide for removal power:

| | |
|---|---|
| Farm Credit Act<br>12 U.S.C. §2244 | "The Governor of the Farm Credit Administration shall be appointed by and serve at the pleasure of the Federal Farm Credit Board. . . . During any period in which the Governor holds any stock in any of the institutions subject to supervision of the Farm Credit Administration, the appointment of the Governor shall be subject to approval by the president and during any such period the President shall have the power to remove the Governor." |
| Federal Home Loan Bank<br>12 U.S.C. §1432 | "(a) The directors of each Federal Home Loan Bank [may] . . . dismiss at pleasure such officers, employees, attorneys, and agents;" |
| Federal Deposit Ins. Corporation<br>12 U.S.C. §1819 Fifth | "To appoint by its Board of Directors such officers and employees . . . and to dismiss at pleasure such officers or employees . . . ." |

| | |
|---|---|
| Overseas Private Investment Corporation 22 U.S.C. §2193 | "(b) . . . The other directors shall be officials of the Government . . . serving at the pleasure of the President of the United States.<br><br>"(d) The Executive Vice President . . . shall serve at the pleasure of the President. . . . Of such persons employed by the Corporation, not to exceed twenty may be appointed, compensated or removed. . . ." |

Further, within the Farm Credit Act itself, the 1971 legislative history demonstrates that Congress differentiated between removal authority, on the one hand, and general supervision, on the other hand.

In 1971 U.S. Code Cong. & Ad. News 2102, when discussing the seventh member of the district board of directors, it is stated:

> "The specific authority for removal by the [Farm Credit Administration's] Governor of the seventh member of the district board which he appoints has been deleted. While the appointment of the seventh member has for its object protection of the general public interest, now that the Government capital has been retired from all of the institutions, the committee believes that once such appointment is made, the removal power would have made such appointee subject to an unwarranted feeling of subservience to the wishes of the Governor. The general supervisory power of the Farm

> Credit Administration over the institutions provides adequate protection and assurance that the congressional intent of the Act will be carried out." [emphasis added]

Initially Congress provided for "specific authority for removal". In the amendments passed in 1971, this was deleted. When indicating that removal authority was no longer needed and general supervision would suffice, Congress differentiated between the two concepts. Accordingly, it cannot be said that Federal Intermediate Credit Banks have the power to remove Production Credit Association Presidents pursuant to their "general supervision" powers.

An answer to whether Congress knew the difference between removal or supervision is found in the Federal Reserve Act. In the Federal Reserve System's enumerated powers, both the power to suspend or remove an officer and the power to exercise general supervision coexist, discounting the argument that they mean one and the same thing. 12 U.S.C. §248 provides in part:

> "The Federal Reserve Board shall be authorized and empowered:
>
> "(f) To suspend or remove any officer or director of any Federal reserve bank, the

cause of such removal to be forthwith communicated in writing by the Federal Reserve Board to the removed officer or director and to said bank.

* * *

"(j) To exercise general supervision over said Federal reserve banks." [emphasis added]

The maxim of statutory construction, expressio unius est exclusion alterius, is aptly applied in this instance. "It is a well-settled principle of statutory construction that the expression of one thing excludes others not expressed." Jones v. H.D. & J.K. Crosswell, 60 F.2d 827, 828 (4th Cir. 1932) [citations omitted].

The decisions of the courts below should be reviewed by this Court for the following reasons:

(a) The decisions of the courts below equate the general supervisory power of one federal instrumentality over another with the power of the supervising instrumentality to terminate the officers of the supervised instrumentality. To make such an equation in a case where the power of the subject bureaucracy is supposed to be decentralized means that a similar result would

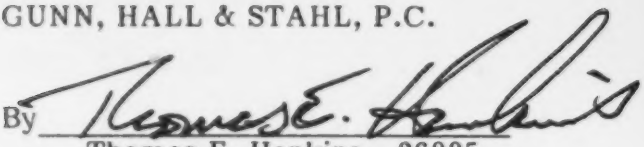
follow in all cases where Congress uses the term "general supervision" in a statutory scheme. Indeed, so far-reaching are the opinions below that Congress would have to specifically list powers not conferred in order to harness the scope of the bureaucracy's power.

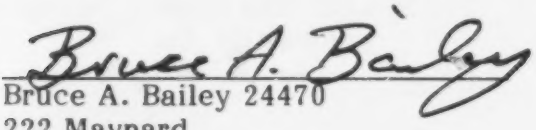
(b) The decisions below will encourage administrative agencies and federal instrumentalities to assume powers not given them by Congress, knowing that such assumptions of power will be unrestrained by the judiciary.

## CONCLUSION

For the reasons set forth above, a writ of certiorari should be granted.

GUNN, HALL & STAHL, P.C.

By 
Thomas E. Hankins - 26005
6812 North Oak, Suite 5
Gladstone, Missouri 64118-2587
Telephone: (816) 436-3100


Bruce A. Bailey 24470
222 Maynard
Warrensburg, Missouri 64093
Telephone: (816) 747-6600

COUNSEL FOR PETITIONER

# APPENDIX A

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 85-1660

| | | |
|---|---|---|
| Clarence B. Bailey, Appellant, | * | Appeal from the United States District Court for the Western District of Missouri |
| v. | * | |
| Federal Intermediate Credit Bank of St. Louis, Appellee. | * | |

---

Submitted: November 15, 1985
Filed: April 9, 1986

---

Before ARNOLD and WOLLMAN, Circuit Judges, and GUNN*, District Judge

---

WOLLMAN, Circuit Judge.

Clarence B. Bailey, formerly chief executive officer of the Osage Production Credit Association, seeks a declaratory judgment that the Federal Intermediate Credit Bank of St. Louis exceeded its

---

*The HONORABLE GEORGE F. GUNN, JR., United States District Judge for the Eastern District of Missouri, sitting by designation.

lawful authority when in March 1984 it removed him from that position. The district court[1] on cross motions for summary judgment found for the Bank, Bailey v. Federal Intermediate Credit Bank, 608 F. Supp. 1009 (W.D. Mo. 1985),[2] and on appeal we affirm.

The Osage Production Credit Association and the Federal Intermediate Credit Bank of St. Louis both are federally chartered instrumentalities of the United States functioning within the federal farm credit system as that system was reorganized by the Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 583 (codified as amended at 12 U.S.C. §§2001-2260 (1982)). The farm credit system

---

[1]The Honorable D. Brook Bartlett, United States District Judge for the Western District of Missouri.

[2]The district court subsequently dismissed without prejudice Bailey's pendent state claims for lack of jurisdiction, and that action is not challenged on appeal.

consists of twelve districts, each headed by a board of directors and each including one federal intermediate credit bank (plus other institutions not relevant here). The intermediate credit banks have responsibility for the production credit associations (PCA's) within their geographic areas, with the PCA's making the actual loans to individuals for farm-related purposes. PCA's, howver, fund such loans primarily through money borrowed in turn from intermediate credit banks. The farm credit system as a whole is regulated by the Farm Credit Administration (FCA), an independent executive agency which sets policy and exercises supervisory authority.[3]

---

[3]The Farm Credit Act has been amended since oral argument was heard in this case, Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, 1985 U.S. Code Cong. & Ad. News (99 Stat.) 1678, and the changes include addition of an express power of removal over system directors and officers. Id. §204, 99 Stat. 1694, 1696. That power, however, is vested in the FCA and extends to all (and not just PCA) officers and directors; and as the

The Federal Intermediate Credit Bank of St. Louis heads the farm credit district which encompasses the Osage PCA. In its letter removing Bailey as Osage chief executive officer, the Bank justified its action as an exercise of the supervisory powers vested in it by section 2072 of title 12 of the U.S.

---

legislative history makes clear, the concern of Congress was with decreasing the FCA's day-to-day involvement and increasing its role as an "arm's length" regulator of the farm credit system. H.R. Rep. 425, 99th Cong., 1st Sess. 3, 12-13 (1985), reprinted in U.S. Code Cong. & Ad. News, Feb. 1986 pamphlet, at 2587, 2589, 2598-99. The legislation neither implicitly nor explicitly suggests any changes in the basic relationships between the institutions within the system itself, for example, between intermediate credit banks and PCA's.

For more detail on the farm credit system and its history, see Daley v. Farm Credit Administration, 454 F.Supp. 953, 954 (D.Minn. 1780); H.R. Rep. 425, supra, at 5-6, reprinted at 2591-92; 12 C.F.R. §§600.1-.60, 611.100-.1000 (1985); K. Meyer, D. Pedersen, N. Thornson & J. Davidson, Agricultural Law 269-70, 272-73 (1985); Brake, A perspective on Federal Involvement in Agricultural Credit Programs, 19 S.D.L. Rev. 567, 567-80 (1974).

Code. Furthermore, it pointed to section 500.2 of the Osage PCA's bylaws, wherein it is provided that a chief executive officer should serve at the pleasure of the PCA board or until "removed *** by the bank." PCA bylaws, however, are drawn up by the FCA and adopted in a standardized format (with options on some provisions) by the local associations. See 12 U.S.C. §§2092, 2252(a)(2). Thus, Bailey argues, bylaw section 500.2 cannot be a source of authority for his removal by the Bank because the bylaw presumed to grant to the Bank powers in excess of those vested in that institution by the legislation that created it.

Our review of this assertion begins from the premise that an agency's view with regard to the proper construction of a statute it is charged with administering is entitled to considerable deference. Chemical Manufacturers Association v. Natural Resources Defense Council, 105 S.Ct. 1102, 1108 (1985). Though we may

not uphold an interpretation contrary to the "'clear meaning of a statute, as revealed by its language, purpose, and history,'" Southeastern Community College v. Davis, 442 U.S. 397, 411 (1979) (quoting International Brotherhood of Teamsters v. Daniel, 439 U.S. 551, 556 N.20 (1979)), the agency's interpretation need not be shown to be the only permissible view. Chemical Manufacturers, 105 S.Ct. at 1108. If, upon our examination, Congress appears not to have actually formulated an intent with regard to removal of PCA officers, a finding that the rational and reasonable precludes us from substituting our own judgment on that issue. See id; Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 104 S.Ct. 2778, 2783 (1984).

The removal bylaw is not contrary to the express language of the Farm Credit Act of 1971. The statute at no point mentions removal of PCA chief executive

officers, neither granting nor denying such power to either the FCA, intermediate credits banks, or PCA's themselves. Bailey, however, asserts that the absence of an express reference to removal among the Bank's enumerated powers, see 12 U.S.C. §2072, must indicate that Congress indeed possessed a specific intent to deny the existence of such a power.

Bailey first relies on the maxim of statutory construction "expressio unius est exclusio alterius"--i.e., the expression of one thing excludes others not expressed. Bailey asserts that since Congress set forth in section 2072 twenty-one powers to be vested in intermediate credit banks, all powers not so listed are denied to such banks. But this argument is actually too simple. The "expressio unius" maxim merely embodies a presumption that, rather than constitutes evidence that, Congress intended to deny all powers not expressly enumerated.

See Illinois Department of Public Aid v. Schweiker, 707 F.2d 273, 277 (7th Cir. 1983); United Steelworkers v. Marshall 647 F.2d 1189, 1232 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981). As the Supreme Court said in considering an argument similar to Bailey's regarding the powers of the Interstate Commerce Commission,

> Our function *** does not stop with a section-by-section search for the phrase 'regulation of leasing practices' among the literal words of the statutory provisions. As a matter of principle, we might agree with appellants' contentions if we thought it a reasonable canon of interpretation that the draftsmen of acts delegating agency powers, as a practical and realistic matter, can or do include specific consideration of every evil sought to be corrected. But no great acquaintance with practical affairs is required to know that such prescience, either in fact or in the minds of Congress, does not exist.

American Trucking Associations v. United States, 344 U.S. 398, 309-10 (1953). The applicability of "expressio unius" depends upon the intent of the drafters of a statute, and the maxim should be invoked only when other aids to interpretation suggest that the language at issue

was meant to be exclusive. Ford v. United States, 273 U.S. 593, 611-12 (1927) (quoting H. Broom, A Selection of Legal Maxims 653 (7th ed. 1874)); cf. Crancer v. Lowden, 121 F.2d 645, 649 (8th Cir. 1941) (doctrine of "expressio unius" not to be used to override a contrary intent). Specifically, "expressio unius" should not prevail when a nonexclusive reading serves the purposes fo rwhich the statute was enacted or allows the exercise of incidental authority necessary to an expressed power or right. 2A Sutherland Statutory Construction §47.25, at 209 (Sands 4th ed. 1984 rev.).

The district court pointed to three main clauses in rejecting an exclusive reading of section 2072 and finding the power of an intermediate credit bank to remove a PCA officer implicit in the scheme of the Farm Credit Act. First, section 2072(15) expressly gives an intermediate credit bank the power to approve the appointment and compensation of PCA

chief executive officers. Second, the same section also gives an intermediate credit bank the power to "supervise the exercise by [PCA's] of the functions vested in or delegated to them," while third, section 2254 provides that PCA's are to be subject to annual audits that shall include "objective appraisals of the effectiveness of management and application of policies in carrying out the provisions of [the Farm Credit Act]." The power to control salary, the district court reasoned, means that an intermediate credit bank can at least indirectly terminate a PCA chief executive officer by refusing to approve compensation. Bailey, 608 F.Supp. at 1012. In addition, the court observed that the Farm Credit Act places no express limits on the power of an intermediate credit bank to remedy--for example, through removal of an officer--violations of farm credit policy found through audits. Id.; see 12 C.F.R.

§§611.1010(i), 614.4050 (1985). Finally, the court looked to the function of an intermediate credit bank in ensuring sound farm credit and concluded that a bylaw giving such a bank the power to remove a PCA chief executive officer reasonably could be seen as an appropriate expression of intermediate credit bank general supervisory power. Bailey, 608 F.Supp. at 1012; cf. American Trucking, 344 U.S. at 311 ("It is an unnatural construction of the Act which would require the [administrative agency] to sit idly by and wink at practices that lead to violations of its provisions.").

We conclude that this grant of supervisory power plus the need for incidental powers to effectuate the purposes of the Act indicates that Congress did not intend its enumeration in section 2072

to be exclusive and that the "expressio unius" maxim thus is not applicable.[4]

Bailey further argues, however, that even if some intermediate credit bank powers may be implied as "supervisory," the power to terminate PCA officers is not one of those powers because Congress has shown that it knows how to grant removal power when it wishes. Specifically, Bailey points to some half

---

[4]We are not dissuaded from this view by Bailey's additional argument, based on the "common law" of employment, that PCA's, despite the statutory silence, have the implicit authority as "employers" to remove their own chief executive officers, while intermediate credit banks, as "separate" organizations, need explicit authorization to interfere with PCA employment relationships. The high degree of control over PCA affairs which Congress has vested in intermediate credit banks (see infra) suggests that any such "common law" presumption should carry little weight in the present case. A PCA is not a private enterprise but an "instrumentality of the United States, created to carry out *** congressional policy and objectives." 12 C.F.R. §611.400 (1985); cf. In re Sparkman, 703 F.2d 1097, 1101 (9th Cir. 1983) ("[P]roduction credit associations are more than private institutions with a federal charter.").

dozen statutes that expressly mention removal, sometimes also with a separate grant of "supervisory" authority. While arguments such as Bailey's have frequently been adopted by courts in other circumstances, we are not persuaded here because of the dissimilarity between the Farm Credit Act and the statutes on which Bailey relies in terms of the overall structure of the legislation, the function of and autonomy accorded the entity whose officer is subject to removal, and the relationship between that entity and the body vested with removal power. Four of the statutes cited by Bailey involve relationships more like those between boards of directors and their own officers,[5] while the

---

[5]12 U.S.C §248(f) (1982) (power of Federal Reserve Board to suspend or remove for cause any director or officer of a federal reserve bank); 12 U.S.C. §1432(a) (1982) (power of directors of Federal Home Loan Bank to dismiss at their pleasure officers of their Bank); 12 U.S.C. §1819 (1982) (power of directors

remainder involve relationships between regulatory agencies and basically autonomous commercial ventures.[6] Intermediate credit banks and PCA's, however, are both day-to-day operating entities and are both within the farm credit system (the FCA is the regulatory body), and the former possess extensive statutory authority over the latter in pursuit of their mutual purpose of serving government farm credit policy. See 12 C.F.R.

---

of Federal Deposit Insurance Corporation to dismiss at their pleasure Corporation officers); 22 U.S.C. §2193(b), (c) (1982) (president and certain directors of Overseas Private Investment Corporation appointed by and serve at pleasure of President of the United States).

[6]12 U.S.C. §1730(g) (1982) (power of Federal Savings & Loan Insurance Corporation to remove for certain violations and unsound practices officers and directors of insured associations); 12 U.S.C. §1786(g) (1982) (same power to National Credit Union Administration Board in relation to officers and directors of insured credit unions); 12 U.S.C. §1818(e) (1982) (same power to Federal Deposit Insurance Corporation in relation to officers and directors of insured banks).

§611.400 (1985) (quoted in part at n.4 supra).

For example, as already mentioned, the FAC has the power to issue and amend PCA bylaws, 12 U.S.C. §2252(a)(2), and in fact any bylaw or amendment proposed by a PCA must be approved by the FCA prior to implementation. 12 C.F.R. §611.1010(b) (1985). The FCA also approved PCA charters and may through these charters determine certain essential institutional attributes including the initial amount of stock of a PCA and the territory in which a PCA may operate. 12 U.S.C. §2091. The FCA may change a PCA charter at any time, id., and may declare a PCA insolvent or require two PCA's to merge. Id. §2183; 12 C.F.R. §611.1130 (1985). A PCA may not go into voluntary liquidation with FCA consent. 12 U.S.C. §2183.

All of the powers of a PCA are subject to supervision by the appropriate intermediate credit bank and the FCA. Id. §2093.

Specifically, a PCA needs intermediate credit bank approval or authorization to invest its funds, to purchase and sell obligations of the United States, to borrow from financial institutions outside the farm credit system, and to participate in loans with other PCA's. Id. §2093(10)-(13). Even when engaging in its primary function of making loans to farmers, a PCA must follow intermediate credit bank dictates governing interest rates, 12 C.F.R. §614.4320 (1985), and loan terms, conditions, and security requirements. 12 U.S.C. §2096(b); e.g., 12 C.F.R. §§614.4200, .4250 (1985). Intermediate credit banks adopt lending standards, define "sound" loans and develop guidelines concerning loans to specialized or hazardous enterprises, establish minimum credit verification procedures, issue credit manuals, prescribe loan application forms and the contents of credit files, and set minimum standards for loan servicing and collection. 12 C.F.R.

§§614.4040-.4050 (1985). Finally, a credit bank may limit the exercise of loanmaking authority by a PCA that exhibits poor judgment in extending and administering credit. Id. §614.4030(a) (1985).

Bailey's examples of express grants of removal power within the Farm Credit Act itself are equally unpersuasive. For example, although section 2244 provides that the governor of the FCA serves "at the pleasure" of the Federal Farm Credit Board, the relationship therein addressed again is much like that between a board of directors and its own corporate officers and very little like that between two entities engaged in day-to-day operations. one being subordinate to and subject to the far-reaching control of the other. Similarly, while prior to 1971 the FCA had the express power to remove the single member it appoints to each district farm credit board and Congress specifically deleted that power, see H.R. Rep. No.

593, 92d Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News 2091, 2101, Congress consistent with that position could have felt necessary and meant to preserve a removal power implicit in intermediate credit banks due to the very different nature of their authority over PCA's. As mentioned earlier, PCA's in fact basically operate on intermediate credit bank money, since loans from intermediate credit bank money, since loans from intermediate credit banks are the primary source of funds loaned in turn by PCA's to farmers. We cannot believe that the express grant of a removal power in other varied circumstances signifies the existence of a clear congressional determination that the removal power was to be denied here.

Finally, Bailey argues that the power of removal as a matter of semantics cannot be implied as a "supervisory" power because it is a "management" power which, if exercised by intermediate credit

banks, would defeat a stated congressional policy of "encourag[ing] farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of allowing an intermediate credit bank to remove a PCA chief executive officer allows such a bank, under the ruse of "supervision," to substitute its "management" decisions for the PCA's "management" decisions, thus emasculating the PCA's statutory power of management and control.

As a semantic matter, however, the congressional declaration of objectives on which Bailey relies speaks only of borrower participation in farm credit system ownership, control, and management. Regardless of the existence or nonexistence of any removal power, borrowers participate in the farm credit system directly through their ownership of PCA's, id. §2094(b), and election of PCA directors, id. §2092, and directly through the PCA's ownership

of intermediate credit banks, id. §2073(b), and election of farm district directors. Id. §2223(a). PCA's thus as a group (by district) control the selection of the persons who hold the removal power over them.

Also semantically, the casual attachment of such imprecise labels as "supervisory" and "management" to various farm credit functions hardly seems sufficient to reveal--or effectuate--an alleged strict congressional determination regarding the limits of intermediate credit bank power. Use of the ordinary dictionary meanings of these terms in fact, given the other-than-ordinary relationship established by statute between PCA's and credit banks, likely would cut back on the banks' explicitly enumerated powers, a result hardly consistent with congressional intent. The better view is that the complete statutory structure, with its accompanying implications, defines

what powers may be considered "supervisory." Cf. Chemical Manufacturers Association v. Natural Resources Defense Council, 105 S.Ct. 1102, 1108 (1985) (no plain meaning for the word "modify" as used in section 301(1) of the Clean Water Act).

To deny the existence of a removal power would give a PCA the ability to emasculate an intermediate credit bank's supervisory powers by making the bank unable to force a PCA to follow bank policies. The FCA--again in the congressional declaration of objectives--is charged with "furnishing sound, adequate, and constructive [farm] credit." 12 U.S.C. §2001(a). FCA regulations "identify areas in which Systemwide and district policies for the guidance of management and operations of the banks and associations are necessary to assure the accomplishment of the Act's objectives," 12 C.F.R. §611.200 (1985); see H.R. Rep. No. 593, supra, reprinted at 2102; and

the intermediate credit bank or district board is directed to adopt consistent lending policies for PCA's, taking into consideration the "cooperative character" of the farm credit system and each institution's "integral part" in "the statutory scheme for the whole System." 12 C.F.R. §611.1010(g) (1985). Each PCA is not an independent, autonomous venture entitled to operate as it pleases under the terms most favorable to its own borrowers regardless of the interests of the whole system. The goal of participation for borrowers cannot be primary to the goal of maintaining the soundness and existence of the institutions in which the borrowers wish to participate. As the district court stated, "If authorizing the credit bank to remove the [PCA] executive director conflicts with borrower control over the association, the conflict is inherent in the policy and objectives of the Farm

Credit Act." Bailey, 608 F. Supp. at 1012.[7]

Our deference to the administrative resolution of this conflict in powers is not made inappropriate, as Bailey contends, because the issue allegedly involves matters not within the 454 F.Supp.

---

[7]Bailey further argues that giving intermediate credit banks removal power would force chief executive officers to "serve two masters with different ideas and policies." He offers in his brief as an example a disagreement between his Osage PCA and the St. Louis Credit Bank concerning the method of collecting (and thus indirectly, the amount of) interest. As outline earlier, however, the statute and regulations give intermediate credit banks extensive control over interest rates and loan servicing: Bailey's argument really seeks a privilege to flout intermediate credit bank authority. Thus, Ponca City Production Credit Association v. United States, 275 F.Supp. 502 (W.D. Okla. 1967) (decided under pre-1971 farm credit system), in which a district court upheld the removal by FCA of a PCA officer, cannot be distinguished, as Bailey contends, as involving a violation by the PCA officer of a farm credit regulation. See also 12 C.F.R. §614.4060 (1985) (PCA's are to exercise their authority in compliance with guidelines of district intermediate credit banks).

953 (D.Minn. 1978), on which Bailey relies, involved an FCA regulation establishing an age limit of seventy for members of district boards of directors. Less deference to the agency's decision was required, the court suggested, because age restrictions had little to do with the substantive concerns of the Farm Credit Act and because the FCA had no expertise with respect to aging. Id. at 955. The FCA bylaw concerning the removal of PCA officers, to the contrary, is integrally related to the congressional purpose of ensuring the availability of sound agricultural credit, and the FCA's peculiar knowledge of the inner workings of the farm credit system make it well-suited to evaluate the need of the various farm credit institutions for incidental and implied powers to effectuate their enumerated powers.

Having concluded that the exercise of removal power by intermediate credit banks "is not inconsistent with the language, goals, or operation of the [Farm

Credit] Act," see Chemical Manufacturers, 105 S.Ct. at 1112, we must uphold the agency's choice to give intermediate banks this power so long as the choice represents a reasonable policy decision. See Chevron, 104 S.Ct. at 2783. As stated by the district court, vesting removal power in intermediate credit banks "assures that the [PCA] chief operating officer will follow [FCA] policies"; and [c]ompliance with the operating policies of the FCA and the supervising credit bank is entirely consistent with Congress' interest in providing an effectively managed, sound farm credit system." Bailey, 608 F.Supp. at 1012. We affirm the grant of summary judgment in favor of the Bank.

A true copy.

Attest:

Clerk, U.S. Court of Appeals,
Eighth Circuit.

# A P P E N D I X  B

In the United State District Court
For the Western District of Missouri
Western Division

| | | |
|---|---|---|
| Clarence B. Bailey, | ) | |
| | ) | No. |
| Plaintiff, | ) | 84-0488-CV-W-6-9 |
| v. | ) | |
| | ) | |
| Federal Intermediate | ) | |
| Credit Bank of | ) | |
| St. Louis, | ) | |
| | ) | |
| Defendant. | ) | |

Order Granting Defendant's Motion
For Summary Judgment On Count I And
Ordering Plaintiff To Show Cause
Why The Remaining Counts Should Not Be
Be Dismissed for Lack of Jurisdiction

In Count I of his complaint plaintiff seeks a declaratory judgment that defendant was without legal authority to discharge plaintiff as executive director of the Osage Production Credit Association (the Association). Defendant moved to dismiss Count I on the ground that Count I failed to state a claim upon which relief can be granted because defendant was authorized by Congress to terminate plaintiff.

Further, defendant argues that the bylaws of the Association explicitly authorized defendant to terminate the chief executive officer of the Association. In support of its motion to dismiss, defendant filed affidavits and a copy of the Association's bylaws.

Because defendant relied on information outside the pleadings, the parties were advised that defendant's motion to dismiss would be treated as a motion for summary judgment under Rules 12(b) and 56, Fed.R.Civ.P.

Plaintiff opposed defendant's motion for summary judgment and filed a cross-motion for summary judgment. Plaintiff opposed defendant's motion for summary judgment and filed a cross-motion for summary judgment. Plaintiff concedes that defendant may generally supervise the Association, but plaintiff asserts that Congress intended that production credit associations should be locally

managed and controlled. Plaintiff argues that local control is thwarted if defendant's general supervisory power includes the authority to remove the chief executive officer of a production credit association. Plaintiff further argues that the Association's bylaws authorizing defendant to remove the Association's chief executive officer are inconsistent with Congress' intent that associations be locally managed.

The parties agree that the issue raised by the cross motions for summary judgment is whether defendant had the legal authority to remove plaintiff from his position as the chief executive officer of the Association under the provisions of the Farm Credit Act of 1971, as amended, 12 U.S.C. §2001, et seq.

Facts

In February, 1983, the Farm Credit Association approved revised standard and optional bylaws to be adopted by

production credit associations. At defendant's board meeting on April 21 and 22, 1983, defendant approved the revised bylaws. On June 23, 1983, the board of directors of the Association unanimously adopted the revised bylaws, including certain optional bylaws, subject to certification by defendant. As corporate secretary, plaintiff certified that "the board of directors of the said association duly adopted the foregoing as the bylaws of said association." The Association's revised bylaws were approved by defendant on August 8, 1983.

Plaintiff had been employed by the Association since June 10, 1963, and had been the executive director since December 1, 1965. Plaintiff did not have a written employment contract with the Association. There was no agreement between the Association and plaintiff about how or why he could be terminated.

On March 14, 1984, representatives of defendant reported to the Association's

board of directors on the results of the bank's audit of the Association. Defendant requested that the Association's board of directors terminate plaintiff as the Association's chief executive officer. The Association's board of directors unanimously refused to do so. Therefore, defendant terminated plaintiff as executive director of the Association.

When plaintiff was terminated by defendant, the Association's bylaws provided in part as follows:

500.2 - Election of Chief Executive Officer and Other Officers

The board shall elect a chief executive officer who shall serve at the pleasure of the board and shall continue in office until a successor is elected and takes office unless the chief executive officer shall resign, die, retire, or be removed by the board of by the bank. Other association officers shall be a secretary, a treasurer, and any other salaried officers provided for by the board....

520 - REMOVAL

The chairman and the vice chairman may be removed from their positions as officers of the board, and the chief executive officer may be removed from office at any time by a majority vote of the entire

membership of the board of directors or by the bank.

## Discussion

Under the Farm Credit Act of 1971, Congress established:

> [A] System of limited-purpose, farmer-owned banks and associations designed to furnish sound, adequate, and constructive credit to farmers and ranchers and their cooperatives. The 1980 Amendments to the Farm Credit Act of 1971 expanded the classes of eligible borrowers to include producers or harvesters of aquatic products, and expanded the lending authority of System institutions to enable them to be more responsive to the credit needs of agriculture.

12 CFR 611.200.

The Farm Credit System is directed by the Farm Credit Administration (FCA) which is "an independent agency in the executive branch of the Government." 12 U.S.C. §2241. Below the FCA are twelve farm credit districts. 12 U.S.C. §2221. Each farm credit district has a federal intermediate credit bank that can loan money to production credit associations or can participate with associations in loaning money to eligible borrowers.

12 U.S.C. §2074. In each farm credit district there are a number of production credit associations that make loans to eligible borrowers. 12 U.S.C. §2096.

In 1971, when Congress decided to continue the Farm Credit System, Congress intended that the Farm Credit System furnish American farmers and ranchers "sound, adequate, and constructive credit."

> It is declared to be the policy of Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

12 U.S.C. §2001(a).

In the same statutory section, Congress stated that an additional objective of the Farm Credit System was "to encourage farmer- and rancher-borrowers participation in the management, control

and ownership of a permanent system of credit for agriculture." 12 U.S.C. §2001(b).

Various statutory and regulatory provisions implement the objective of borrower participation in the management of the Farm Credit System. For instance, member participation in the affairs of production credit associations is assured by the statutory and regulatory provisions providing that members of an association shall serve on an association's board. 12 U.S.C. §2902; 12 CFR 611.1080.

Congressional concern about furnishing "sound", adequate and constructive credit" was reflected in the requirement that the FCA and credit banks regulate and control the organization and operations of associations, the primary lenders in the system. For instance, the FCA

> shall have the power, under rules and regulations prescribed by [the FCA] or by prescribing in the terms of the charter or by approval of bylaws of the association, to provide for the organization

of the association, the initial amount of stock of the association, the territory within which its operations may be carried on, and to direct at any time such changes in the charter as [the FCA] finds necessary for the accomplishment of the purposes of this charter.

12 U.S.C. §2091.

Furthermore, Congress authorized and directed the FCA "to delegate to a Federal intermediate credit bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over...production credit associations, their officers and employees...as may be determined to be in the interest of effective administration." 12 U.S.C. §2253 [emphasis added]. The board of directors of each farm credit district has the power "to...[p]rovide rules and regulations, governing...associations in the district, not inconsistent with law." 12 U.S.C. §2227. Federal intermediate credit banks are required to "supervise the exercise by the production credit associations of the functions

vested in or delegated to them." 12 U.S.C. §2072(15).

Virtually every aspect of an association's operations are supervised and controlled by the FCA and/or credit banks. For instance, a credit bank, along with the FCA, approves revisions in an association's bylaws (12 CFR §611.1010(b)); supervises the associations in the district "to assure that authorized services are available to eligible persons in the most effective and efficient manner" (12 CFR §611.1010(f)); establishes loan policies for associations in its district (12 CFR §614.4030); supervises credit operations (12 CFR §614.4050); conducts regular audits including evaluations of the effectiveness of management (12 U.S.C. §2254; 12 CFR §614.4051; 12 CFR §617.7030); and takes corrective action based on recommendations in examinations and audit reports (12 CFR §611.1010(i)). If corrective action ordered by the credit

bank does not solve the problem, the FCA may declare an association insolvent. 12 CFR §611.1130. The board of directors of an association cannot liquidate the association without approval from the credit bank's board and the FCA. Id.

In the personnel area, an "objective appraisal" must be made by the FCA of the "effectiveness" of an association's management at least once a year. 12 U.S.C. §2254. Also, a credit bank is authorized to "[a]pprove the salary scale of the officers and employees of" associations in the bank's district. 12 U.S.C. §2072(15). Although an association may elect a chief executive officer (12 U.S.C. §2093(17)), the supervising credit bank is explicitly granted the power to "approve...the appointment and compensation of the chief executive officer" of the association. 12 U.S.C. §2072(15) [emphasis supplied].

Neither the FCA, the supervising credit bank, nor the employing association

is given explicitly the authority to terminate the association's executive director. However, implicit in the power to elect an executive is the power to terminate. Therefore, the employing association could terminate its executive director. Likewise, implicit in the statutory scheme is the authority for the FCA and the supervising credit bank to terminate an association's executive director if the bank believes it is necessary to assure a sound farm credit system. The FCA has the general authority to assure that associations are effectively managed. See, for instance, 12 U.S.C. §§2253 and 2254. No limitation is placed on the remedial steps the FCA can take to correct deficiencies in the effectiveness of an associations' management as shown by the statutorily required audit. 12 U.S.C. §2254. (The FCA may delegate to a credit bank any power over associations that the FCA determines to be in

the "inteest of effective administration." 12 U.S.C. §2253.) Also, Congress expected a credit bank to have control over the executive director of each association in the bank's district because the bank must approve the appointment and the compensation of the executive director. The refusal of a bank to approve any compenstation for the executive director would effectively terminate the executive director's services.

Furthermore, Congress explicitly authorized the FCA "[w]here necessary and appropriate to carry out the policy and objectives of this chapter, [to] issue and amend or modify Federal charters or the bylaws of institutions of the System." 12 U.S.C. §2252(2). By regulation, a farm credit district board acting as such or as the board of a credit bank "shall...[a]dopt bylaws for each bank and approve bylaws for associations from standard and optional bylaws approved

by the Farm Credit Administration." 12 CFR §611.1010. Pursuant to this statutory and regulatory authority, the FCA issued, the Association adopted, and defendant's board approved, bylaws which specifically authorized the bank to remove the Assocaitions' executive director.

Plaintiff has failed to demonstrate that these bylaws are not "appropriate to carry out the poicy and objectives of the Farm Credit Act." 12 U.S.C. §2252(2). If authorizing the credit bank to remove the executive director conflicts with borrower control over the association, the conflict is inherent in the policy and objectives of the Farm Credit Act. Congress intended that the FCA resolve such conflicts. The FCA did so by requiring associations to adopt bylaws authorizing banks to remove the executive director. Memoralizing in an association's bylaws the supervising credit bank's authority to remove the

executive director assures that the chief operating officer will follow the operating policies of the FCA and of the supervising credit bank. Compliance with the operating policies of the FCA and the supervising credit bank is entirely consistent with Congress' interest in providing an effectively managed, sound farm credit system. Therefore, when plaintiff was terminated by the defendant, the action was in accord with the Association's bylaws which implement the policies and objectives of the Farm Credit Act.

For the reasons stated in this opinion, defendant had the authority to remove plaintiff as executive director of the Association. The parties have agreed that, if defendant had the authority to terminate plaintiff, the issues in Count I must be decided in favor of defendant. Therefore, defendant's motion for summary judgment on Count I will be granted and plaintiff's motion for summary judgment will be denied.

It is hereby ORDERED that:

1) summary judgment on Count I is granted in favor of defendant and against plaintiff;

2) plaintiff's motion for summary judgment on Count I is hereby denied; and

3) within thirty days from the date of this Order plaintiff shall show cause in writing why the remaining counts of his complaint should not be dismissed for lack of jurisdiction.

D. Brook Bartlett
United States District Judge

Kansas City, Missouri
April 25, 1985.

# APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 85-1660-WM.

| | | |
|---|---|---|
| Clarence B. Bailey, | * | |
| | * | |
| Appellant, | * | Appeal from the |
| vs. | * | United States |
| | * | District Court for |
| Federal | * | the Western |
| Intermediate Credit | * | District of |
| Bank of St. Louis, | * | Missouri |
| | * | |
| Appellee. | * | |

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

May 30, 1986

# A P P E N D I X  D

In The United States District Court
For the Western District of Missouri
Western Division

| | | |
|---|---|---|
| Clarence B. Bailey | ) | |
| | ) | |
| Plaintiff, | ) | Case No. |
| vs. | ) | 84-0488-CV-W-9 |
| | ) | |
| Federal | ) | |
| Intermediate Credit | ) | |
| Bank of St. Louis, | ) | |
| | ) | |
| Defendant. | ) | |

Stipulation for Purpose of
Summary Judgment Motions

For the purpose of enabling the Court to dispose of the parties' respective motions for summary judgment with regard to Count I (defendant's motion having been denominated Motion to Dismiss), the parties stipulate that there is no genuinely disputed issue as to any material fact concerning either motion and the parties specifically agree upon the following facts which are material to said motions, each party reserving, however, objections as to relevancy and materiality:

1. The Federal Intermediate Credit Bank of St. Louis is located within the Sixth Farm Credit District;

2. The Osage Production Credit Assocaition is one of the production credit associations operating within the Sixth Farm Credit District;

3. The Board of Dirctors of the Federal Intermediate Credit Bank of St. Louis approved the revised bylaws issued by the Farm Credit Administration in February of 1983, together with certain optional bylaw provisions provided for therein, at the regular meeting of the Defendant's Board held on April 1, 1983.

4. The Board of Directors of the Osage Production Credit Association at its regular meeting held on June 23, 1983, unanimously adopted the revised bylaws for production credit association issued by the Farm Credit Administration in February of 1983 and approved for adoption by the Board of Directors of

the Federal Intermediate Credit Bank of St. Louis in April of 1983, including certain optional bylaws, subject to formal certification by the Intermediate Credit Bank of St. Louis.

5. The revised bylaws adopted by the Board of Directors of the Osage Production Credit Association at its June 23, 1983 board meeting were certified by the Federal Intermediate Credit Bank of St. Louis on August 8, 1983.

6. A true copy of the revised bylaws adopted by the Board of Directors of the Osage Production Credit Association on June 23, 1983 and certified by the Federal Intermediate Credit Bank of St. Louis on August 8, 1983 is attached to the Affidavit of Woodrow Bray as Appendix "A".

7. Section 500.2 and Section 520 of the revised bylaws, adopted by the Osage Production Credit Association on June 23, 1983 and certified by the Federal

Intermediate Credit Bank of St. Louis on August 8, 1983, as set forth in Appendix A to the Affidavit of Woodrow Bray filed herein, were in full force and effect on March 14, 1984. Neither Section 500.2 nor Section 520 was an optional provision of the bylaws.

8. Clarence B. Bailey has not served in the capacity of president and chief executive officer of the Osage Production Credit Association nor has he been employed by the Osage Production Credit Association pursuant to a written contract of employment.

9. Clarence Bailey was an employee of Osage Production Credit Association from 1963 up until March 14, 1984, when he was terminated by the defendant.

10. The Board of Directors of Osage Production Credit Association refused to terminate plaintiff's employment on March 14, 1984 by a unanimous vote.

GUNN, HALL & STAHL
A Professional Corporation
Thomas E. Hankins
6812 N. Oak, Suite 5
Gladstone, MO 64118
(816) 436-3100

Bruce A. Bailey
222 Maynard
Warrensburg, MO 64093
(816) 747-9158

ATTORNEYS FOR PLAINTIFF

James M. Byrne
LASHLY, CARUTHERS, BAER & HAMEL
714 Locust St.
St. Louis, MO 63101
(314) 621-2939